THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.9268 of 2004

Dated: 20-07-2007

Between:

R.Jayalakshmi and others.

..... PETITIONERS

AND

The District Collector, Chittoor, and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.9268 of 2004

ORDER:

The petitioners, who are forty-eight in number, are the residents of Daminedu Village, Tirupathi (Rural) Mandal, Chittoor District. They allege that all of them belong to Scheduled Caste community. They allegedly occupied small extents of land comprised in survey No.107 totally admeasuring Ac.1.88. They made representation on 20.09.2000 before third respondent, namely, the Mandal Revenue Officer, for grant of house site pattas. It is their case that third respondent conducted socio economic survey, identified the land in survey No.107 as suitable for assignment of pattas and sent proposals on 28.01.2003 to second respondent, namely, the Revenue Divisional Officer, requesting necessary permission to issue house site pattas to all the eligible beneficiaries. They contend that though the proposals are pending before respondents

1 and 2, no action was taken in right direction. It is alleged that third respondent came to the petitioners' colony on 19.05.2004 and threatened them with dispossession ignoring the orders passed by this Court in W.P.No.8927 of 2004 dated 12.05.2004. Therefore, they filed instant writ petition seeking a writ of Mandamus declaring the action of third respondent in trying to dispossess them as illegal and arbitrary and for a consequential direction to issue house site pattas duly considering the proposals dated 28.01.2003.

This Court, while considering the matter at the admission stage, on 25.05.2004 directed the parties to maintain *status quo*. Subsequently the matter was admitted on 22.06.2004. On 31.08.2006, this Court vacated the interim order by reason of *ex parte* order passed in W.V.M.P.No.3470 of 2004. An application, being W.P.M.P.No.23987 of 2006, was moved, which was allowed on 13.10.2006 duly setting aside the *ex parte* order dated 31.08.2006. The miscellaneous applications are again placed before this Court for necessary orders. At that stage, the writ petition itself is heard finally with the consent of the learned counsel for both the parties and the same is being disposed of by this order.

In the counter-affidavit filed by third respondent, the allegation that the petitioners are in possession of the houses is denied and the allegation that third respondent demolished the houses constructed by the petitioners is also denied. It is further stated that when the petitioners tried to raise temporary structures, their attempts were foiled by the revenue authorities. Third respondent, however, admits that he

had sent orders on 28.01.2003 to second respondent requesting permission for issue of house site pattas. It is further stated that the land in survey No.107 is classified as Vagu Poramboke and therefore, first respondent, namely, the District Collector, by his letter dated 16.03.2003 in response to an enquiry by the National Commission for Scheduled Castes and Scheduled Tribes(NC for SCs and STc), Hyderabad, informed NC for SCs and STc that it is not possible to grant permission for assignment of house site pattas in respect of land comprised in survey No.107. Accordingly the petitioners were issued an endorsement dated 21.04.2004 by third respondent rejecting their request for house site pattas in survey No.107. It is stated that the watercourse passes through survey Nos.101, 106, 109 etc., and the water joins at Erramreddypalli tank of Renigunta Mandal.

A reference is also made to Memo Nos.30307/assn.I(I)/2000-1, dated 23.05.2000 and 65961/assn.I(1)/97-11, dated 08.02.1999 issued by the Government directing first respondent to protect water bodies like mountains, tanks and lakes etc., from encroachment. A reference is also made to the decision of the Supreme Court in **Hinch Lal Tiwari v. Kamala Devi**[1] as well as BSO 15(4)(ii)(a) of the Andhra Pradesh Board Standing Orders (for brevity, APBSO), which prohibit assignment of tank bed and foreshore lands.

A reply affidavit is filed on behalf of the petitioners. The allegation that the petitioners are not in possession of the land and that when they were trying to raise temporary structures, their attempts were foiled by the revenue officials is denied. It is averred that they are in occupation of the Vagu Poramboke land in survey No.107 for residential purposes and that for the last several years, there is no water flowing in said Vagu Poramboke. They also contend that the Government Memoranda and BSO 15(4) of APBSO prohibiting the assignment of such land have no application in this case.

This Court has heard the learned counsel for the petitioners and the learned Assistant Government Pleader for Revenue (Assignment), who reiterated their position as disclosed in the pleadings. In the background of the case and having regard to the rival submissions, the short point that falls for consideration is whether a direction can be issued to the respondents to allot/assign house site pattas in respect of the land in survey No.107, which is classified as Vagu Poramboke?

BSO 15(4) of APBSO reads as under.

BSO 15(4) Lands that may be assigned and that may not be assigned:-

(i) All lands at the disposal of the Government except those hereinafter prohibited may be assigned. The assignment of lands shall generally be free of market value except in the case of project affected lands in

which case market value shall be collected.

(ii) The assignment of the following classes of lands is prohibited:

(a) Poramboke (tank beds, foreshore of tank bed cattle stands, grazing lands and reserved lands (reserved for depressed class members or for any public purpose, such as schools, playgrounds, hospitals, maternity centers, reading rooms and extension of house-sites, Panchayat purposes, town sites and lands in the proximity thereof.

(b) Land which has been occupied for 18 months and adjoins a reserve forest or an unreserved block of a square mile or more until the Collector has consulted the District Forest Officer and considered any objections, he may have to its assignment;

(c) Lands containing topes or valuable trees;

(d) Lands within cantonment limits;

(e) Lands reserved under Section 26 of the Forest Act;

(f) Lands within port limits;

(g) Lands near the sea coast within one furlong of high water mark of the sea;

(h) Water course porambokes, namely, margins of channels, streams etc;

(i) Lands in the vicinity of aerodromes or landing grounds (i.e.) within a belt of 200 yards;

(j) Lands containing minerals, quarries etc.

(k) Padugais i.e. land within the flood bank of rivers, lanka lands not held on ryotwari tenure, river accretions and reformed lands for which the owners have ceased to pay assessment;

(l) Lands where “pati matti” is available and;

(m) Any other lands which are required or likely to be required for any public or any special purposes necessary for the provision of amenities of the community or connected with the development of the village.

Provided, however, that tank bed lands, foreshore lands and lands under categories (g), (j), (k) and (m) above, if not immediately required or if their occupation be not objectionable at present, may be leased with a condition for resumption, when required for public purpose without payment of compensation for improvements, if any effected.

A plain reading of the provisions of BSO 15(4) would show that the assignment of tank beds, foreshore of tank beds, cattle stands and grazing lands and reserved lands, is prohibited. The land in question, in respect of which proposals are afoot, is classified in the revenue records, as tank poramboke. It squarely falls within the category of lands mentioned in BSO 15(4)(ii)(a), even if it is foreshore of tank bed.

BSO 15 deals with the assignment of land for agricultural purpose

and BSO 21 deals with the assignment of land for house site pattas. There is no dispute or denial that both these provisions specifically prohibit the assignment of land, which is classified as Vagu Poramboke, stream, tank bed or water body by whatever name it is called etc. There is also no denial that the Government issued directions in two memoranda referred to hereinabove directing first respondent to protect water bodies. Merely because a Vagu Poramboke or a tank is in disuse or has become defunct, the same would not enable the revenue authorities to assign it for house site purpose or agricultural purpose, notwithstanding the encroachment there on.

In an unreported judgment of this Court in **M/s.The Water Users Association, Thimmaya Gari Palle Cheruvu v The Government of Andhra Pradesh**[2], this Court has considered the question of allotment of house-sites in a land which is classified as vagu poramboke/water body and laid down that, "any use of land which does not specify the principle of sustained development detrimental to water body as laid down in **Vellore Citizens' Welfare Forum v Union of India**[3], cannot be permitted. The construction of houses in vagu poramboke is certainly detrimental to environment and ecology. Indeed that is the main purpose behind BSO 15(4).

The submission of the learned counsel for the petitioners is that the entire land classified as Vagu Poramboke has been encroached and no water is running and therefore, there cannot be any objection for first respondent to issue proceedings reclassifying the land and then to assign the land. The submission cannot be accepted in view of the decision of the Supreme Court in **Hinch Lal Tiwari**'s case (supra)**.**

Here another point is whether the petitioners are in possession of the land. An averment is categorically made in paragraph 2 of the counter-affidavit that in May 2004, petitioners gathered at the land in survey No.107, attempted to raise temporary structures and that the revenue officials prevented them from doing so. In paragraph 4 of the reply-affidavit filed by first petitioner, it is averred that "MRO has filed a counter affidavit, *inter alia,* admitting the proposal submitted by the then MRO to the RDO on 28.01.2003 for grant of house site pattas to the petitioners, but falsely stated that the petitioners have not constructed in the said lands and sought for vacation of interim orders." When the petitioners assert that they are in possession of the land and raised structures, and the same is denied in the counter-affidavit, mere statement that such counter averment is false would not be sufficient to disprove the case of the respondents. The petitioners failed to produce any material in support of their case. Therefore, this Court records finding that the petitioners were never in possession of the land in survey No.107 and when they tried to raise temporary structures, third

respondent prevented them from doing so.

Third respondent sent proposals to second respondent on 28.01.2003 but the same were not acted upon. The petitioners then made a representation to the National Commission for Schedule Castes and Scheduled Tribes, who called for a report from first respondent. In response thereto, first respondent (see paragraph 5 of the counter-affidavit) informed NC for SCs and STs by letter dated 16.03.2003 that the land in survey No.107 cannot be assigned and an endorsement was also issued by third respondent to the petitioners on 21.04.2004. Therefore, request of the petitioners for assignment of the land in survey No.107 cannot be considered. However, the respondents should explore the possibilities of assigning any suitable land to the petitioners and if the same is not possible, they should explore the possibility of allotting house sites under Integrated Novel Development In Rural And Model Municipal Areas Scheme, Rajeev Gruha Kalpa scheme or any other housing scheme. The petitioners are also given liberty to make representation individually or as a group. In this writ petition, no relief can be granted.

The writ petition, with the above directions and observations, is accordingly disposed of. No costs.

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(**V.V.S.RAO, J**)

20th July, 2007
ghn

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[1] (2001) 6 SCC 496 = AIR 2001 SC 3251

[2] W.P.No.20323 of 2000 dated 06.2.2002

[3] (1996) 5 SCC 647